

July 9, 1946

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

Mr. Harry M. Whitmer
Business Manager
Arizona State Hospital
Phoenix, Arizona

Dear Sir:

We have your letter of April 15, 1946, asking this office to give an opinion on the following:

"What authority, if any, do we have to have from the State Health Department before moving the graves? Second, do we have to have a special law passed authorizing the moving of these graves or are there existing laws at present? Third, do we have to have permission from relatives before moving the graves?"

What law authorizes us to give state land for a road right of way? Should the expense of moving the graves be borne by the state or the county?"

Answering your first question, we invite your attention to Sec. 43-9201, A.C.A.1939, which, as far as pertinent to your question, reads as follows:

"Mutilation or removal of dead body.--
Every person who mutilates, disinters or removes from the place of sepulture the dead body of a human being, without authority of law is guilty of a felony".

It is our opinion that the Health Department is without authority to issue a permit to remove the graves.

Answering your second question, it is our opinion that it will be necessary to have a special law passed authorizing the State Hospital to remove the graves.

Answering your third question, we are of the opinion that it is not necessary to obtain permission from relatives before removing the graves.

Answering your last question, there is no law authorizing the State Hospital Board to give any land for state right of way. In view of our holding, there is no need of answering as to the expense in moving the graves.

1/6-81-61

For your information, we will advise you that according to the minutes of the Board of Supervisors of Maricopa County, a petition was filed on April 6, 1910, asking the Board of Supervisors to open and declare a County road on East Roosevelt Street, taking a strip 25 feet wide off of Section 2 in Township 1 North of Range 3 East, which said 25 feet of land belongs to the State Hospital.

Also, for your information, please be advised that there appears on record a quit claim deed dated April 20, 1910, from the Territory of Arizona, acting through and by the Board of Control of Arizona, to the County of Maricopa, and said deed is recorded in Book 84 of Deeds as Page 267, and reads as follows:

"Twenty-five (25) feet off the North end of the southwest $\frac{1}{4}$, being the North 25 feet of the said southwest $\frac{1}{4}$ of Section 2 in Township 1 North of Range 3 East of the Gila and Salt River Base and Meridian.

The above described premises are deeded with the understanding that the same are to be used for road purposes only, and it is hereby stipulated between the parties hereto that the title to the same is to revert to the grantor herein whenever the same cease to be used for such purposes".

The deed is executed as follows:

"The Territory of Arizona acting through and by the Board of Control of Arizona "by its secretary, Robert A. Craig, Secretary. (Seal)".

We have been unable to find any law authorizing the State Board of Control to give a quit claim deed to the above premises, and we are of the opinion that the quit claim deed given by the Territory of Arizona, acting through and by the Board of Control of Arizona by its secretary, Robert A. Craig, is invalid.

It is also our opinion that the designation of East Roosevelt Street as a County road was not properly established as required by the Territorial Laws, and, therefore, is not legally established.

Also, for your information, please be advised that from the map given to this office by the County Attorney of Maricopa

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County, there appears to be fourteen (14) graves off of the land belonging to the State Hospital that undoubtedly will have to be removed at state expense.

Trusting the above answers your questions satisfactorily, we are

Very truly yours,

JOHN L. SULLIVAN
Attorney General

MAURICE BARNH
Assistant Attorney General

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